U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LOUIS CRUZ and DEPARTMENT OF LABOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, New York, NY

Docket No. 03-1631; Submitted on the Record;
Issued November 14, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly terminated the payment of appellant's transportation expenses to and from work.

On December 13, 1996 appellant, then a 45-year-old supervisory claims examiner, filed a notice of traumatic injury alleging that on December 9, 1996 he slipped in the bathroom at work and twisted his left knee and leg due to the wet floor. The Office accepted his claim for left knee sprain and medial meniscus tear of the left knee and began paying appropriate compensation benefits. Appellant was also approved for physical therapy and arthroscopic surgery of the left knee.

Dr. Mark L. Pitman, a Board-certified orthopedic surgeon and appellant's treating physician, authorized appellant to return to light-duty work on July 7, 1997. Dr. Pitman noted that appellant could work light duty eight hours per day and had reached maximum medical improvement.

On July 14, 1997 the Office authorized transportation for appellant to and from work from his home in Bellerose, NY, to his office in New York City. Transportation was authorized by Luxury Transportation, Inc., from July 9 to 23, 1997. The Office subsequently extended transportation services through August 29, 1997.

By letter dated September 5, 1997, the Office referred appellant to Dr. Steven O'Brien[1] for a second opinion examination to determine the extent of appellant's disability. The Office requested that Dr. O'Brien answer specific questions, including whether there was a medical basis to support appellant's continuing transportation cab service to and from home and work.

[1] The Board was unable to determine whether he is Board-certified.

In a report dated October 24, 1997, Dr. O'Brien checked "no" as to whether appellant still required cab service to and from work. On October 22, 1997 Dr Pitman indicated "yes" that he agreed with Dr. O'Brien that appellant no longer required cab service to and from work.

By letter dated November 3, 1997, the Office informed appellant that, based on the medical reports of record, cab service to and from work would be discontinued effective November 3, 1997.

By letter dated November 8, 1997, appellant requested that the Office reconsider changing the effective date of termination of the cab service from November 3 to 10, 1997.

On June 19, 1998 appellant filed a notice of recurrence of disability (Form CA-2a) alleging that, beginning May 18, 1998, he was totally disabled for work due to his December 9, 1996 left knee injury. By decision dated August 12, 1998, the Office accepted that appellant sustained a recurrence of disability of the left knee and authorized repeat arthroscopic surgery.

Appellant also claimed that he developed a consequential injury to the right knee as a result of overcompensating for the left knee. By decision dated November 5, 1998, the Office expanded the claim to include right medial meniscus tear and subsequent right knee arthroscopy.

In a duty status report (Form OWCP-5), Dr. Pitman indicated that appellant could work eight hours per day and could drive and operate a vehicle but that he was unable to climb the stairs at the Long Island Railroad Station or the subway.

Appellant returned to full-time light-duty work on January 4, 1999 and was again transported to and from work *via* cab. The Office authorized payment of this transportation expense.

On February 10, 1999 appellant filed a claim for recurrence of disability alleging that, beginning January 18, 1999, he developed swelling and pain in both knees after shopping with his spouse. He stopped work on January 19, 1999 and returned to light-duty work on January 21, 1999 and continued to use cab transportation to and from work.

On April 8, 1999 appellant was referred to second opinion physician and Board-certified orthopedic surgeon, Dr. Ronald Grelsamer, to determine whether he was capable of returning to his regular-duty position and whether he continued to require personal transportation to and from work.

In a report dated April 20, 1999, Dr. Grelsamer stated that he examined appellant and that he was able to return to his regular position. He noted that appellant's right patella pain was often made worse by the use of stairs and that his necessity for specific transportation would mainly depend on the amount of stairs he had to take. Appellant reported that to get to and from work he must climb 216 stairs. Dr. Grelsamer stated: "Most people with this condition are not provided with any specific means of transportation. Rather, the condition is treated and this is what I would recommend here." He recommended anti-inflammatory medication and physical therapy.

In a subsequently received progress note dated March 22, 1999, Dr. Pitman stated that the only problem appellant still had was swelling and that there was no pain. He stated: "I think he should try to return to normal activity and we will check PRN [as the occasion arises]."

Dr. Pitman released appellant to full-duty work as a supervisory claims examiner on October 18, 1999.

By letter dated November 6, 2001, the Office informed appellant that it had received his bills for personal limousine transportation to and from work daily, five times per week. In order to support continuing transportation service, the Office requested that appellant describe his continued need for personal transportation. The Office also requested that appellant submit a comprehensive medical report from his treating physician explaining the need for transportation in relation to his accepted conditions.

By letter dated November 26, 2001, appellant contended that he still needed the car service because he had terrible pain in both knees from excessive standing, walking or stair climbing, especially in cold or wet weather. He noted other modes of transportation to and from work required both public bus and subway service, which would require him walking eight blocks and climbing three sets of stairs. Regarding the use of a car, he stated that his wife was the registered owner of their vehicle and that he could "not count on" that car because she used it in her daily activities. Regarding the requested medical report he stated that he was in the process of finding a new orthopedic specialist since his orthopedist retired in November 2001.

By decision dated December 4, 2001, the Office granted appellant schedule awards for a 10 percent impairment of both right and left lower extremities.[2]

On December 18, 2001 appellant was referred to Board-certified orthopedic surgeon, Dr. Dwight C. Blum, to determine whether he still required the use of personal transportation to and from work.

In a report dated January 9, 2002, Dr. Blum stated:

> "Based on the findings of the restriction in motion and pain, with the history, as described by the claimant, of giving way and locking in the right knee and continued pain, I do not feel that it is reasonable to expect the claimant to go up and down multiple levels of staircases to utilize the current system of public transportation as far as trains and subways in New York City that are available. I do feel that there is a limitation as to stairs and walking distances in this claimant, which is obviously, at this point, a permanent condition.
>
> "From a medical standpoint, I do not feel that personalized transportation to and from work is required. I do feel that he can drive a car and certainly in doing so,

[2] By decision dated September 5, 2000, the Office awarded appellant a 2 percent schedule award for the left lower extremity and a 10 percent schedule award for the right lower extremity. By decision dated July 6, 2001, the Office hearing representative remanded the case due to a conflict in the medical evidence. By decision dated December 4, 2001, the Office awarded appellant an additional eight percent for the left lower extremity.

> get to work on his own. However, if he is able to find parking in lower Manhattan, it may be at distances, which will be difficult for him to walk to where he works from where he parks."

On November 1, 2002 appellant's employing establishment confirmed that appellant was working his regular full-time position and that any work restrictions were within the requirements given by his physicians.

By letter dated December 9, 2002, the Office notified appellant that it proposed to terminate payment of his transportation fees to and from work since there is no provision for payment of transportation fees for daily commute to and from work for injured employees who have returned to their date-of-injury position.

By decision dated March 21, 2003, the Office terminated payment of appellant's transportation fees. The Office found that, since appellant was performing the full range of duties of his position as a supervisory claims examiner, he was not partially disabled and was not in a rehabilitation program and, therefore, was not eligible for payment of travel expenditures as a vocational rehabilitation expense.

The Board finds that the Office properly terminated the payment of appellant's transportation fees to and from work.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.[3] After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation benefits without establishing that the disability has ceased or that it is no longer related to the employment.[4] Further, the right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for wage loss.[5] To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.[6]

In this case, the Office authorized the payment of appellant's transportation expenses to and from work for more than four years from July 1997 to October 2001, when he was considered partially disabled due to his knee injuries. However, appellant's treating physician released appellant to full-duty work effective October 18, 1999, such that appellant is no longer considered partially disabled and not entitled to continuing transportation services.

The record indicates that appellant returned to full-duty work to his previous position performing the full range of duties as a supervisory claims examiner. He was also no longer in a rehabilitation program and was, therefore, not eligible for travel expenditures as a vocational

[3] *Harold S. McGough*, 36 ECAB 332 (1984).

[4] *Vivien L. Minor*, 37 ECAB 541 (1986).

[5] *Marlene G. Owens*, 39 ECAB 1320 (1988).

[6] *Calvin S. Mays*, 39 ECAB 993 (1988).

rehabilitation expense. His employing establishment verified that at the time the Office proposed to terminate the payment of the transportation expenses appellant was working his full-duty position and any medical restrictions were within the requirements given by his physicians.

In the most recent medical report of record dated January 9, 2002, second opinion physician Dr. Blum found it was not medically necessary for appellant to have personalized transportation to and from work. Although he noted that appellant should not walk up and down multiple levels of stairs, the physician found that appellant was capable of driving a car and getting to and from work on his own accord.[7] Dr. Blum's opinion that appellant could drive himself to work was based upon a complete and thorough examination and testing of both of appellant's lower extremities. He discussed the degree of pain appellant had in each knee, measured the range of motion in both knees and performed other various tests related to both lower extremities. He also discussed the factual history regarding appellant's injuries and reviewed all the medical evidence of record. He diagnosed chronic pain syndrome left and right knee, postarthroscopic surgery. Dr. Blum noted that he took into consideration the restriction in motion and pain and the history of the locking of appellant's right knee, but stated that from a medical standpoint he did not think that personal transportation to and from work was required.

Second opinion physician Dr. Grelsamer indicated that appellant's right knee pain was made worse by the use of stairs but noted that most people with appellant's condition were not provided with personal transportation. Instead of recommending the continuation of personal transportation, he suggested that appellant treat his condition with anti-inflammatory medication and physical therapy.

Under the factual circumstances of this claim, the basis for payment of continued transportation expenses for appellant's daily commute to and from work is not readily apparent under the Federal Employees' Compensation Act. Appellant has been returned to his regular duty position as a supervisory claims examiner at the employing establishment and is earning wages equal to those earned prior to his employment injury. This is not a situation in which the transportation costs incurred are being made in connection with medical treatment for travel to or from a hospital or physician's office,[8] or as an expense under an approved vocational rehabilitation program.[9] As a supervisory claims examiner with fixed hours and place of work, it cannot be said that appellant's transportation expenses are being incurred as a requirement of his employment with the federal government.[10] The Board has generally recognized that the Office has broad discretion in approving services provided under 5 U.S.C. § 8103 and 5 U.S.C. § 8104

[7] The Office originally authorized use of a car service because appellant could not drive himself to and from work.

[8] 5 U.S.C. § 8103. *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.10 (April 1992).

[9] 5 U.S.C. § 8104. *See generally* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Vocational Rehabilitation Services*, Chapter 2.813.8 (September, 1995).

[10] *See, e.g., Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001) (a rural letter carrier required to furnish her car for use during the workday).

of the Act, with the only limitation on the Office's authority being that of reasonableness.[11] As appellant's request for transportation expenses is not made under either section 8103 or 8104, the Board has not been directed to any authority under which reimbursement for transportation to and from work is proper.

Accordingly, the March 21, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
November 14, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[11] *See James R. Bell*, 52 ECAB 414 (2001); *Daniel J. Perea*, 42 ECAB 214 (1990).